IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PIL WRIT PETITION NO. 45 OF 2006

Salim Akbarali Nanji] .. Petitioner

Versus

1. The Union of India & 5 ors.] .. Respondents

Mr.S.A. Nanji the petitioner-in-person.

Mr. N.R. Prajapati for respondent No.1, 2 and 5.

Mr. M.P.S. Rao i./b M/s. Udwadia & Udeshi for respondent No.3.

Mr. Ravi Hegde i/b M/s. Shaunak Satpute & Co. for respondent No.4.

Mr. P.K. Samdani, senior counsel i/b M/s. RES Legal for respondent No.6.

CORAM: R.M. LODHA &
NARESH H. PATIL, JJ.

DATED: 03RD AUGUST, 2006

P.C. :

. The petitioner is a shareholder, holding 261 shares of Development Credit Bank Limited (DCB Bank) and has also savings Bank Deposit Account at Dongri Branch of the said Bank. Through this Public Interest Litigation, the petitioner challenges the Initial Public Offer (I.P.O.) of Rs.300 crores be DCB Bank. The following prayers have been made:

"(i) to quash and/or set aside the permission granted and/or approval issued by the Respondent No.3-R.B.I.; and/or by the Respondent No.4-SEBI and/or by the Respondent No.5-R.O.C. and/or by the Respondent No.1 and 2 - Ministry of Finance, Govt. of India to the Respondent No.6-D.C.B. - Bank in the matter of proposed Initial Public Offer (I.P.O.) of aggregating Rs.300 crores and listing of equity shares on the Stock Exchange.

(ii) to order and/or direct the Respondents No.1,2,3,4 and 5 to withdraw and/or cancel any approval or permission granted by them to the Respondent No.6-D.C.B. Bank in the matter of proposed Initial Public Offer (I.P.O.) of aggregating Rs.300 crores and listing of the Equity shares on the Stock Exchange."

2. The contention of the petitioner is that the draft prospectus issued by DCB Bank shows that it has incurred huge financial loss of Rs.9.77 crores in financial year 2002-2003, Rs.43.18 crores in financial year 2003-2004, Rs.68.31 crores in financial year 2004-2005 and Rs.34.21 crores in the half year of 2005-2006 (i.e. as on 30th September, 2005). The petitioner has referred to the statement in the draft prospectus that the Bank’s interest income has declined in each of the past five years and although the Bank is implementing its revitalization plan, it may not be successful and may continue to incur losses. If that be

so, the petitioner's contends that fixing the price band between Rs.45/- to Rs.50/- per equity share of face value of Rs.10/- in the proposed I.P.O. is highly unreasonable and unfair banking practice and detrimental to the interest of new retail investors and public at large.

3. In opposition to the Writ Petition, three Affidavits have been filed. In the Affidavit filed by DCB Bank Limited, conduct of the petitioner has been highlighted that with a shareholding of only 261 equity shares, the petitioner has been unrelenting and dragging the Bank into diverse litigation. The present Writ Petition, according to DCB Bank, is the eighteenth proceeding. As regards the proposed I.P.O., DCB Bank has set up the case that the requisite approval has been obtained from the Reserve Bank of India and that not a single relevant fact has been suppressed or concealed in the draft prospectus. The potential investors are expected to read the disclosures made therein carefully and make an informed choice as to whether they should or should not subscribe to the shares of the Bank.

4. Reserve Bank of India (respondent No.3) has filed its Affidavit through K.N. Rajan, Deputy General Manager in the Department of Banking Operations &

Development. As per the said reply the Reserve Bank of India has framed policies and guidelines and as per the said policies in force relating to capital requirements of private sector banks, all such private sector banks including DCB are required to have a minimum net worth of Rs.300 crores. The proposals for issue of public equity are examined by Reserve Bank of India in the light of the guidelines dated 28th February, 2005 viz. "Guidelines on Ownership and Governance in Private Sector Banks" and the approval has been granted to DCB keeping in view the said guidelines. As regards pricing of equity issued / proposed to be issued, the Reserve Bank of India in its Affidavit has stated that it has no role to play in this regard and it is out of the purview of the Reserve Bank of India.

5. Security Exchange Board of India (SEBI - respondent No.4) has filed reply through its Manager Vikas S.S. It is stated in the said Affidavit that though concerning I.P.O. the SEBI (Disclosure & Investor Protection) Guidelines 2000 are attracted, but in the case of private sector banks, the norms that are ordinarily applicable to a company proposed to make an offer are not applicable. Reference in this regard is made to Chapter II of the said guidelines. The SEBI, in its Affidavit has referred to clause 2.1 of SEBI

(Disclosure & Investor Protection) Guidelines and stated that it has got the power only to specify the changes in the offer document and not to accord permission.

6. From the compilation of documents tendered by the senior counsel for DCB, marked "X" for identification purposes, it appears that SEBI recommended to the merchant bankers of the respondent No.6 Bank to amend the draft prospectus as suggested in the communication dated May 8, 2006. The amendment is said to have been carried out in the draft prospectus previously filed with SEBI. This is apparent from the communication sent by merchant bankers to SEBI on 8th May, 2006.

7. Having considered the entire material, we find that there is no breach of any law, regulation or the guidelines framed by the Reserve Bank of India and SEBI. As regards the fixation of the price, suffice it to say that it is part of the economic and financial judgment of the Bank and pricing is fixed by the merchant bankers keeping in view all relevant aspects.

8. We record and accept the statement of the senior counsel for DCB Limited that the financial position of the Bank as on 31t March, 2006, has been

disclosed in the draft prospectus and communicated to SEBI.

8. We find no justification to interfere in the I.P.O. offer made by the respondent No.6.

. Writ Petition does not deserve to be admitted. Dismissed in limine.

Sd/-
[R.M. LODHA, J.]

Sd/-
[NARESH H. PATIL, J.]